

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITIOIN NO. 4785 OF 2004

Office Notes, Office Court's or Judge's orders
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Mr. Ajay Gadkari for the petitioner.

Mrs. B.P. Jakhale for respondents 3A to
3E, 4 to 6.

CORAM : ANOOP V. MOHTA, J.

DATE : 12.12.2005

. Heard. There is no dispute that the trial Court has granted the amendment. By the impugned order, the learned Judge therefore, recasted the issues and restricted the same. The petitioner therefore, being aggrieved by the order initially moved an application for review of that order of recasting of issues. That was also rejected. Therefore, this writ petition against both the orders. The Court is bound to

frame the issues based on the pleadings available on the record. At this stage the Court therefore, initially right in framing the issues based on the pleadings available. The recast of issues later on at the instance of the parties, whereby the same issues have been restricted, on a foundation of some other proceeding pending between the parties. I am of the view, that the trial can proceed based on the issues, which were already framed earlier. The recast of issues at this stage amounts to restricting the rival contentions raised by the parties. In the interest of justice, therefore, it is necessary that the trial to proceed based on the issues already framed and not based on the recasted issues. Therefore, the impugned order of recasting of issues dated 8/2/2001, is quashed and set aside. The trial Judge to proceed based on the issues framed earlier. However this is with liberty to the parties to raise an appropriate defence and or pleadings

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during the trial based on any other proceedings pending between the parties, arising out of the properties in question, if any. In view of this, writ petition is allowed in terms of prayer clause (a), (b) and (c). Writ petition is disposed of accordingly.

(ANOO V.MOHTA, J.)